

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)
)
 Opinion requested by)
 James R. Christiansen,)
Goleta Valley Today)
 _____)

No. 75-082
 December 2, 1975

BY THE COMMISSION: We have been asked the following question by James R. Christiansen, representing Goleta Valley Today:

Goleta Valley Today is a newspaper which is published daily in Goleta Valley and has a circulation of approximately 5,000 copies. Editorials routinely appear in the newspaper, along with general coverage of national and local news. Each week the publisher of Goleta Valley Today prints a "South Coast Shopping Guide." The shopping guide is an advertising flyer containing reproductions of advertisements that appear in the newspaper. It is distributed door-to-door to approximately 60,000 residential addresses in Santa Barbara County. From time to time, editorials written in Goleta Valley Today have been reprinted in the shopping guide. In March 1975, an election was held concerning the annexation of Goleta Valley to Santa Barbara. In the weeks preceding the election, the newspaper published editorials opposing the annexation and these editorials were reprinted in the shopping guide. A somewhat larger percentage of editorials than usual were reprinted in the shopping guide during the annexation campaign.

Commission files contain a copy of the shopping guide for the week of February 10-16, 1975. The editorial reprinted on the front page bears the caption "Annexing Strangles Local Control." The reprinted editorial is the only portion of the shopping guide which is not paid commercial advertising.

Is the publisher required to file campaign statements pursuant to Chapter 4 of the Political Reform Act (Government Code Sections 84100, et seq.) by reason of the costs attributable to publication of the editorials in the newspaper and the shopper?

CONCLUSION

A newspaper editorial is neither a contribution, as defined in Government Code Section 82015, nor an expenditure as defined in Government Code Section 82025. Therefore, newspapers are not required to file campaign statements under the Political Reform Act by reason of publishing editorials. However, the cost of reproducing an editorial in an advertising circular, flyer or handbill which does not routinely contain news of a general character and of general interest may be reportable as an expenditure.

ANALYSIS

The question posed by Mr. Christiansen does not distinguish between editorials published in Goleta Valley Today, as part of the regular editorial policy of the newspaper, and editorials reproduced in the "South Coast Shopping Guide." For reasons described herein, we conclude that there is a distinction between the two types of publications, and that costs attendant to writing and printing editorials in a bona fide newspaper do not come within the purview of the Political Reform Act, Government Code Sections 81000, et seq.,^{1/} but costs attendant to reproducing and circulating an editorial in an advertising circular may be "expenditures" within the meaning of the Act. In using the term "newspaper", we refer to those publications which are commonly understood to be newspapers and which are printed and distributed periodically at daily, weekly or other short intervals for the dissemination of news of a general character and of general interest. We do not consider paid advertising to be "news" of a general character and of general interest. "Newspaper", as used in this opinion, does not include handbills, circulars, flyers, or the like, unless distributed as part of a publication which constitutes a newspaper within the meaning of this paragraph.^{2/}

^{1/}
All statutory references are to the Government Code unless otherwise noted.

^{2/}
Newspapers are exempt from sales and use taxes under Revenue and Taxation Code Section 6362. Regulations implementing the statutory exemption distinguish between newspapers and handbills, circulars or flyers. See 18 Cal. Adm. Code Section 1590.

Sections 84200, et seq. require all candidates and committees supporting or opposing candidates and ballot measures to file periodic campaign statements. Thus, the publisher of Goleta Valley Today is not required to file a campaign statement unless he is a candidate or a committee. "Candidate" is defined in Section 82007, and clearly is not applicable to the instant discussion. "Committee" is defined in Section 82013 and includes any person or combination of persons which receives contributions totaling \$500 or more, makes expenditures totaling \$500 or more, or contributes cash or cash equivalents totaling \$5,000 or more in a calendar year.^{3/} The definition of "expenditure" is set forth in Section 82025,^{4/} and "contribution" is defined in

^{3/}

Section 82013 provides, in its entirety:

"Committee" means any person or combination of persons who directly or indirectly receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party, whether national, state or local, if:

(a) Contributions received total five hundred dollars (\$500) or more in a calendar year;

(b) Expenditures and contributions made, other than contributions described in subsection (c), total five hundred dollars (\$500) or more in a calendar year; or

(c) Contributions of cash, checks and other cash equivalents paid directly to candidates and committees total five thousand dollars (\$5,000) or more in a calendar year. Persons or combinations of persons who are covered by this subsection but not by subsections (a) or (b) are deemed to be committees only for purposes of Chapter 4 of this title.

^{4/}

Section 82025 provides:

"Expenditure" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

Section 82015.^{5/}

Although in a sense the costs of newspaper editorials regarding elections, despite the lack of a specific reference thereto, might appear to be "expenditures" or "contributions" within the meaning of the Act, closer analysis of the language and purposes of the Act does not support such an interpretation. Taken as a whole, the language of the Act does not lead us to conclude that newspapers are covered by the reporting requirements set forth in Sections 84100, et seq. There is no specific mention of newspapers in the definitions of "committee" (Section 82013), "expenditure" (Section 82025) or "contribution" (Section 82014). In light of the particular protection accorded freedom of expression in the press, we believe that editorials would have been specifically mentioned if it were intended that they fall within the ambit of the Act.

Newspaper editorials are an integral part of American political life, and the free expression of editorial opinion is constitutionally protected.^{6/} Supporting certain candidates and measures through the expression of editorial opinion is an essential part of the functions traditionally performed by the press and one that consistently has been protected by the courts. See Miami Herald Publishing Company v. Tornillo, 418 U.S. 241 (1974); Mills v. Alabama, 384 U.S. 214 (1966).

Of course, the disclosure provisions of the Act do not prohibit expenditures of money and the inclusion of expenditures incidental to publishing newspaper editorials, therefore, would not necessarily constitute a direct infringement on the freedom of the press. However, treating incidental costs of publishing editorials as "expenditures" could inhibit the publication of political news and opinions. Such an inclusion would impose an administrative burden on newspaper publishers, particularly if the publisher had to make a judgment regarding each news editorial and item of commentary relative to whether it favored one side in an election campaign or was made for "political purposes." Furthermore, reporting incidental costs of publication as campaign "expenditures" might create the erroneous impression that the newspaper is providing financial support to a campaign rather

^{5/}

Section 82015 provides:

"Contribution" means a payment, a forgiveness of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes....

^{6/}

U.S. Const. Amend. I; Cal. Const. Art. I, Sec. 2.

than mere editorial support, and this might cast doubt on the independence of the newspaper.

Because disclosure might inhibit the free exercise of editorial opinion, we conclude that editorials would have been specifically mentioned if intended to fall within the definition of expenditure. In the absence of express inclusion in the Act, we decline to interpret the reporting requirements of Chapter 4 to include newspaper editorials.

This conclusion is buttressed by the fact that requiring newspapers to report the costs incurred in expressing an editorial policy would not promote the purposes of the Act. The purposes of the Act relating to expenditures are set forth in Section 81002, which provides, in relevant part:

...

- (a) Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited;
- (b) The amounts that may be expended in statewide elections should be limited in order that the importance of money in such elections may be reduced;

...

Neither of these purposes would be served by requiring disclosure of the costs of printing newspaper editorials. When a newspaper endorses a candidate or ballot measure, that endorsement is by nature known to the public. Indeed, its very usefulness to the campaign arises from the fact that it is read by the voters. Accordingly, disclosure of the costs associated with printing and distributing a newspaper editorial would not make the voters more fully informed in any way that is relevant to the purposes of the Act.

Similarly, the purpose of limiting amounts expended in statewide elections would not be served by including newspapers within the definition of committee. The costs attributable to an editorial are a minimal part of the costs of writing, printing and distributing a newspaper. Requiring newspapers to register as committees and disclose costs of producing editorials as expenditures would have little impact on the spending limitations applicable to other committees in statewide elections.

For these reasons, we conclude that the disclosure and reporting requirements of the Political Reform Act do

not apply to editorials in regularly published newspapers, such as Goleta Valley Today. However, the costs of reprinting and redistributing editorials from Goleta Valley Today as part of the "South Coast Shopping Guide" may be expenditures. Unlike the Goleta Valley Today, the shopping guide does not routinely carry news of a general character and of general interest. Editorials are not written for inclusion in the shopping guide, and appear therein only because they occasionally are reprinted from the Goleta Valley Today. Consequently, the shopping guide does not express any original editorial opinions or communicate news to the surrounding community. Instead, it carries classified and display advertisements reprinted from the newspaper, and is distributed at no cost to approximately 60,000 homes. The sample copy supplied to the Commission is comprised entirely of paid advertising, except for the reprinted editorial. In light of the differences in content and function between the shopping guide and a newspaper, such as the Goleta Valley Today, we do not think that the shopping guide can properly be excluded from the purview of the Political Reform Act. Accordingly, costs attendant to reprinting an editorial from another source in the shopping guide are expenditures if the editorial is reprinted for the purpose of influencing the voters for or against a candidate or measure.

During the annexation campaign, editorials opposing annexation were reprinted in the shopping guide more frequently than other editorials had been, one indication that the editorial may have been reprinted for the purpose of influencing the voters. In addition, the content of "Annexing Strangles Local Control," which appeared during the week of February 16, indicates that the editorial was reprinted for the purpose of influencing the voters against the local measure. The editorial specifically identified the measure, referred to the fact that the measure was before the people for a vote, and advocated a particular result in the election.

Under these circumstances, the inclusion of editorials advocating the defeat of a measure in the shopping guide is similar to distributing political handbills in a community. The shopping guide is used as a vehicle for publicizing the political views of the publisher in order to influence the result of a pending election. Accordingly, we conclude that the costs attributable to reprinting such editorials are expenditures which should be accounted for properly.^{7/} The amount

^{7/} See 2 Cal. Adm. Code Section 18580. For purposes of the expenditure limitations for statewide ballot measures, "expenditure" does not include the costs incurred by a news-
(Cont'd. next page)

of the expenditure is the pro rata cost of printing the shopping guide which is attributable to the editorial, presumably determined on the basis of the space in the shopping guide devoted to the editorial. The publisher does not, however, have to include the costs attributable to the original preparation of the editorial when it appeared in Goleta Valley Today.^{8/} If the pro rata costs of printing the shopping guide exceed \$500, the publisher of the "South Coast Shopping Guide" is a committee as defined in Section 82013(b), and must file periodic disclosure statements as required by Section 84206.

Approved by the Commission on December 2, 1975.
Concurring: Brosnahan, Carpenter, Lowenstein and Miller.
Commissioner Waters was absent.


Daniel H. Lowenstein
Chairman

7/(Cont'd.)

paper in preparing or communicating an opinion or reporting and commenting on the measure or the campaign related to the measure. However, the costs of reproducing such material are expenditures within the meaning of Section 85300.

8/
If the shopping guide with the reprinted editorial were printed more frequently or distributed to a greater number of homes than usual, specifically for the purpose of influencing the outcome of the election, the entire additional printing costs would be expenditures.